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9 Attorneys for Defendant  
10 STANDARD INSURANCE COMPANY

11 UNITED STATES DISTRICT COURT  
12 SOUTHERN DISTRICT OF CALIFORNIA  
13

14 DAVID FELT,

15 Plaintiff,

16 v.

17 STANDARD INSURANCE  
18 COMPANY and DOES 1 through 50,

19 Defendants.

Case No. 08 CV 0801 DMS CAB

NOTICE OF REMOVAL OF  
CIVIL ACTION UNDER 28  
U.S.C. § 1441

[DIVERSITY JURISDICTION]

21 TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT  
22 COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

23 PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. § 1441, Defendant  
24 Standard Insurance Company ("Standard"), hereby removes the above-entitled  
25 action from the Superior Court of the State of California for the County of San  
26 Diego to the United States District Court for the Southern District of California.

27 This removal is based upon the original jurisdiction of the United States  
28 District Court over the parties consistent with 28 U.S.C. § 1332 based on the

ORIGINAL

CP

1 existence of diversity of citizenship of the parties.

2 In support of its notice of removal, Standard states to the Court as follows:

3 1. Plaintiff commenced this action against Standard and Does 1 through  
4 50 by filing a complaint in the Superior Court of the State of California for the  
5 County of San Diego (the "Superior Court"), entitled *David Felt v. Standard*  
6 *Insurance Company and DOES 1 through 50*, Case No. 37-2008-00052861-CU-IC-  
7 NC, on April 2, 2008.

8 2. On or about April 11, 2008, Standard was served with the summons  
9 and Complaint. A true and correct copy of the Complaint and Summons is attached  
10 hereto as Exhibit A.

11 3. On April 30, 2008, Standard filed its General Denial and Defenses to  
12 Plaintiff's Complaint in the Superior Court of the State of California for the County  
13 of San Diego. A true and correct copy of the General Denial and Defenses is  
14 attached hereto as Exhibit B.

15 4. This Notice of Removal of Civil Action from State Court ("Notice") is  
16 timely filed pursuant to 28 U.S.C. § 1446(b) which provides that such notice "shall  
17 be filed within thirty days after the receipt by the defendant, through service or  
18 otherwise, of a copy of the initial pleading setting forth the claim upon which such  
19 action or proceeding is based." Standard has filed this notice within thirty (30) days  
20 after it first received the Complaint. The Complaint was the first paper from which  
21 Standard could ascertain that the action was removable.

22 5. This Court has original jurisdiction of this action under 28 U.S.C. §  
23 1332 in that it is a civil action wherein the matter in controversy, on information  
24 and belief, exceeds the sum of \$75,000, exclusive of costs and interests, and is  
25 between a citizen of a state and a citizen of a foreign state. Specifically, removal is  
26 proper based on the following:

27 a. Standard is informed and believes that the amount in controversy  
28 exceeds \$75,000 because, in addition to seeking damages for Standard's alleged

1 failure to provide disability benefits, Plaintiff claims an unspecified amount of  
2 general damages for emotional distress and other incidental and compensatory  
3 damages, as well as punitive damages and attorneys' fees, which amounts must be  
4 considered in calculating the amount in controversy. *See Brandt v. Superior Court*  
5 (*Standard Ins.*), (Cal. 1985) 37 Cal. 3d 813, 817 (attorneys' fees must also be  
6 considered by the Court in assessing the amount in controversy of the action); *Galt*  
7 *G/S v. JSS Scandinavia*, (9th Cir. 1998) 142 F. 3d 1150 (holding that attorneys fees  
8 plaintiffs can recover as a matter of law must be considered by the Court in  
9 calculating the amount in controversy); *Surber v. Reliance Nat'l Indem. Co.*, (N.D.  
10 Cal. 2000) 110 F. Supp. 2d 1227, 1232, citing *Richmond v. Allstate Ins. Co.*, (S.D.  
11 Cal. 1995) 897 F. Supp. 447, 450 (exemplary and punitive damages also to be  
12 considered in determining amount in controversy). Furthermore, Plaintiff's failure  
13 to plead a specific amount of damages in her Complaint should be construed in  
14 favor of Standard, supporting a finding that the minimum amount in controversy  
15 has been met. *See Bosinger v. Phillips Plastic Corporation*, (S.D. Cal. 1999) 57 F.  
16 Supp. 2d 986, 989.

17 b. Standard is informed and believes that Plaintiff was, at the time this  
18 action was commenced in state court, and still is a resident of California.

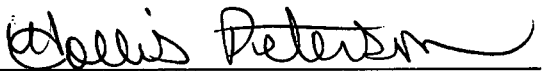
19 c. Standard was, at the time of filing this action, and still is incorporated  
20 in Oregon, and principal business office is in Portland, Oregon. The day-to-day  
21 control of Standard is exercised from Oregon. The individuals who control the day-  
22 to-day operations of Standard's business work at Standard's corporate headquarters,  
23 located in Portland, Oregon. Standard supervises its business operations throughout  
24 the country from Oregon. The vast majority of Standard's employees are located in  
25 Oregon. The majority of Standard's real and personal property is located in  
26 Oregon. Standard is not a citizen of the State of California. *See Declaration of*  
27 *Rebecca J. Jeffrey in Support of Defendant Standard Insurance Company's Notice*  
28 *of Removal.*

1 d. Defendants designated as Does 1 through 50 are fictitious defendants,  
2 are not parties to this action, have not been served and are to be disregarded for the  
3 purposes of this removal. 28 U.S.C. § 1441(a).

4 6. Based on the foregoing, this action is one over which this Court has  
5 original jurisdiction and which may be removed by Standard to this Court pursuant  
6 to 28 U.S.C. §§ 1441(b) and 1446 because complete diversity of citizenship exists  
7 between Plaintiff and Standard.

8 Dated: May 1, 2008

Jones Day

9  
10 By:   
11 Hollis Peterson

12 Attorney for Defendant  
13 STANDARD INSURANCE  
14 COMPANY  
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# SUMMONS (CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):  
STANDARD INSURANCE COMPANY; AND

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**FILED**  
Clerk of the Superior Court

APR 02 2008

By: L. Crain, Clerk

DOES 1 TO 20 50 AC  
YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):  
DAVID FELT

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):  
SUPERIOR COURT OF CALIFORNIA  
325 So. MELROSE DR.  
325 So. MELROSE DR.  
VISTA, 92081  
NORTH COUNTY DIVISION

CASE NUMBER: 37-2008-00052861-CU-IC-NC  
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
BROOKS L. ILER SBN: 99020 858-413-1551 Fax 858-413-1553  
VIRGIL A. ILER SBN: 158460  
ILER & ILER LLP

13400 POMERADO RD. POWAY, CA 92064

DATE:

(Fecha) APR 02 2008

Clerk, by \_\_\_\_\_ Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

Standard Insurance Company

under:

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> CCP 416.10 (corporation)     | <input type="checkbox"/> CCP 416.60 (minor)             |
| <input type="checkbox"/> CCP 416.20 (defunct corporation)        | <input type="checkbox"/> CCP 416.70 (conservatee)       |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify):                        |   |

4. ☐ by personal delivery on (date):

[SEAL]

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): BROOKS L. ILER SBN: 99020 VIRGIL A. ILER SBN: 158460 ILER & ILER LLP 13400 POMERADO RD. POWAY, CA 92064 TELEPHONE NO.: 858-413-1551 FAX NO.: Fax858-413-1553 ATTORNEY FOR (Name): DAVID FELT		<div style="text-align: right;">CM-010</div> <div style="text-align: center;">FOR COURT USE ONLY</div> <div style="text-align: center;">2008 MAR 20 PM 4:16</div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 325 So. MELROSE DR. MAILING ADDRESS: 325 So. MELROSE DR. CITY AND ZIP CODE: VISTA, 92081 BRANCH NAME: NORTH COUNTY DIVISION		JUDGE:  DEPT:
CASE NAME: FELT v. STANDARD		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)	<input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: 37-2008-00052861-CU-IC-NC

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input checked="" type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	---	---

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties<br>b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve<br>c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses<br>e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court<br>f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): TWO: Breach of Contract; Insurance Bad Faith
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case: (You may use form CM-015.)
- Date: 3-19-08

BROOKS L. ILER SBN: 99020  
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

#### NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed in sanctions).
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.



**INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET****CM-010**

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

**CASE TYPES AND EXAMPLES****Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability *(not asbestos or toxic/environmental)* (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

**Non-PI/PD/WD (Other) Tort**

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)  
Defamation (e.g., slander, libel) (13)

Fraud (16)

Intellectual Property (19)

Professional Negligence (25)

Legal Malpractice

Other Professional Malpractice *(not medical or legal)*

Other Non-PI/PD/WD Tort (35)

**Employment**

Wrongful Termination (36)

Other Employment (15)

**Contract**

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract *(not unlawful detainer or wrongful eviction)*  
Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage *(not provisionally complex)* (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

**Real Property**

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

**Unlawful Detainer**

Commercial (31)  
Residential (32)  
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

**Judicial Review**

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor  
Commissioner Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)**

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

**Enforcement of Judgment**

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment *(non-domestic relations)*  
Slater State Judgment  
Administrative Agency Award *(not unpaid taxes)*  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

**Miscellaneous Civil Complaint**

RICO (27)  
Other Complaint *(not specified above)* (42)  
Declaratory Relief Only  
Injunctive Relief Only *(non-harassment)*  
Mechanics Lien  
Other Commercial Complaint Case *(non-tort/non-complex)*  
Other Civil Complaint *(non-tort/non-complex)*

**Miscellaneous Civil Petition**

Partnership and Corporate Governance (21)  
Other Petition *(not specified above)* (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief from Late Claim  
Other Civil Petition



Brooks L. Iler, S.B.# 99020  
Virgil A. Iler, S.B.# 158460  
ILER & ILER, LLP  
13400 Pomerado Road  
Poway, CA 92064  
Tel (858) 413-1551  
Fax (858) 413-1553

2008 MAY 16

Attorneys for Plaintiff, DAVID FELT

**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION**  
**UNLIMITED JURISDICTION**

**DAVID FELT,**

Plaintiff,

vs.

**STANDARD INSURANCE COMPANY and**  
**DOES 1 through 50,**  
Defendants.

**CASE NO.**

**37-2008-00052861-CU-IC-NC**

**COMPLAINT FOR BREACH OF  
CONTRACT AND INSURANCE BAD  
FAITH;**

**DEMAND FOR JURY TRIAL**

Plaintiff DAVID FELT alleges:

**JURISDICTIONAL ALLEGATIONS**

1. Plaintiff DAVID FELT is, and at all times mentioned herein was, an individual residing in San Diego County, California.

2. Defendant STANDARD INSURANCE COMPANY (hereinafter "STANDARD") is a corporation licensed to sell insurance and doing business as an insurer in the State of California, incorporated in the State of Oregon with its principal place of business in the State of Oregon.

3. The insurance contract which is the basis of this lawsuit was entered into in the County

**COMPLAINT FOR BREACH OF CONTRACT AND INSURANCE BAD FAITH**

1  
2 of San Diego, State of California; plaintiff suffered emotional distress damages in the County of  
3 San Diego; the contract breached herein was breached in the County of San Diego.

4  
5 4. At all times herein mentioned, DOE Defendants 1 through 50 were individuals and  
6 business entities the exact nature of which is unknown to Plaintiff and Plaintiff prays leave to  
7 amend this Complaint to show their true names and capacities when the same has been finally  
8 ascertained.

9  
10 5. Plaintiff is informed and believes, and upon such information and belief alleges,  
11 that each of the defendants designated herein as DOE is negligently or otherwise legally  
12 responsible in some manner for the events and happenings herein referred to and negligently or  
13 otherwise caused injury and damage thereby to Plaintiff, as hereinafter alleged.

14  
15 6. At all times herein mentioned, each and every one of the defendants was the agent,  
16 servant, employee, joint venturer, and/or franchisee of each of the other defendants, and each and  
17 every one of the defendants was at all times acting within the course and scope of said agency,  
18 service, employment, joint venture, and/or franchise.

19 **First Cause of Action**

20 **BREACH OF CONTRACT**

21 7. On or about September 14, 2005, plaintiff, a public service officer with the City of  
22 Carlsbad police force, was insured under a long-term disability insurance plan purchased from  
23 defendant STANDARD through his employer, the City of Carlsbad, a public entity; a copy of the  
24 insurance contract, policy number 311713, is attached to this complaint as Exhibit 1.

25  
26 8. Though plaintiff purchased the insurance policy at issue in this case through his  
27 employer, the City of Carlsbad, and said policy was part of the group plan offered through his  
28 employer, the plan and policy are exempt from the statutory scheme of the Employees Retirement

Security Income Act of 1974 29 U.S. Code 1000 et. seq. (ERISA), as such plan is a "governmental plan" as defined under 29 U.S. Code 1002 (32), exempt under 29 U. S. Code 1003.

9. At all times herein mentioned the policy was in full force and effect; plaintiff had paid his policy premiums in full, and otherwise performed all obligations under the policy.

10. On or about September 14, 2005, plaintiff became disabled within the terms of his insurance policy, thus entitling him to benefits beginning on or about September 14, 2005; plaintiff duly made notice of claim to his employer and began receiving disability benefits from defendant STANDARD.

11. On or about December 12, 2007, defendant STANDARD denied plaintiff's right to on-going benefits, thus breaching its contract with plaintiff; the denial was timely appealed and the final administrative denial was made by STANDARD on January 18, 2008.

12. As a direct result of said breach by defendant STANDARD, plaintiff has suffered a loss of past and future disability benefits in an amount to be proved at trial.

### Second Cause of Action

#### INSURANCE BAD FAITH

13. The insurance policy issued by defendant STANDARD contained, by law, an implied covenant of good faith and fair dealing; Defendant breached the implied covenant of good faith and fair dealing by numerous acts and omissions including but not limited to:

- a. Failing to promptly, adequately and fairly investigate the claim before denial;
- b. Misrepresenting the terms and conditions of the policy;
- c. Causing plaintiff to incur thousands of dollars in attorney's fees in order to force defendants to honor the terms of the insurance contract;

1  
2 d. Denying an obviously valid claim without sufficient cause to do so.

3 14. By reason of such bad faith conduct on the part of defendant, plaintiff was forced to  
4 hire legal counsel, and thus incurred special damages in an amount to be shown according to  
5 proof.  
6

7 15. As a further proximate result of the bad faith conduct of defendant, plaintiff has  
8 suffered emotional distress, entitling him to an award of general damages in an amount to be  
9 determined at trial and according to proof.  
10

11 16. Defendants' aforementioned conduct was despicable, and subjected plaintiff to cruel  
12 and unjust hardship, in conscious disregard of his rights under the policy and the law; defendant  
13 misrepresented material facts with the intent to deprive plaintiff of his rights and property; said  
14 conduct was part and parcel of a widespread and ongoing pattern and practice at STANDARD;  
15 said conduct justifies an award of punitive damages, in an amount calculated to punish defendant,  
16 and by way of example, said amount to be determined at trial and according to proof.  
17

18 WHEREFORE, Plaintiffs prays Judgment against Defendant as follows:

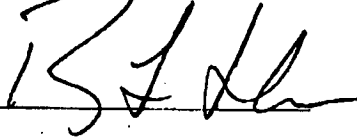
- 19 1. For special damages, in an amount according to proof, plus interest at the legal rate.  
20 2. For attorneys fees expended in obtaining policy benefits.  
21 3. Damages for emotional distress, in an amount according to proof.  
22 4. For punitive damages.  
23 5. For costs of suit herein.  
24 6. For such other relief as the court deems proper.  
25

26  
27 ///

28 ///

ILER & ILER, LLP

Dated: 3-18-08



By: Brooks L. Iler,  
Attorney for Plaintiff  
DAVID FELT

**JURY DEMAND**

Plaintiff demands jury trial in this matter.

~~ILER & ILER, LLP~~

Dated: 3-18-08



By: Brooks L. Iler,  
Attorney for Plaintiff  
DAVID FELT





1 Katherine S. Ritchey (State Bar No. 178409)  
2 JONES DAY  
3 555 California Street, 26th Floor  
4 San Francisco, CA 94104  
5 Telephone: (415) 626-3939  
6 Facsimile: (415) 875-5700  
7 Email: ksritche@jonesday.com

8 Hollis R. Peterson (State Bar No. 254535)  
9 JONES DAY  
10 12265 El Camino Real  
11 Suite 200  
12 San Diego, CA 92130  
13 Telephone: (858) 314-1200  
14 Facsimile: (858) 314-1150  
15 Email: hpeterson@jonesday.com

16 Attorneys for Defendant  
17 STANDARD INSURANCE COMPANY

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
19 **COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION**

20 DAVID FELT,

21 Plaintiff,

22 v.

23 STANDARD INSURANCE COMPANY and  
24 DOES 1 through 50,

25 Defendants.

**CASE NO. 37-2008-00052861-CU-IC-NC**

**Assigned to Hon. Jacqueline M. Stern,  
Dept. N-27**

**GENERAL DENIAL AND DEFENSES  
OF STANDARD INSURANCE  
COMPANY TO PLAINTIFF'S  
COMPLAINT**

Complaint Filed: April 2, 2008

26 Pursuant to section 431.30(d) of the California Code of Civil Procedure, defendant  
27 Standard Insurance Company ("Standard") generally denies each and every allegation of  
28 PLAINTIFF'S Complaint filed April 2, 2008.

29 Having answered PLAINTIFF'S Complaint, Standard alleges its affirmative defenses.  
30 Each defense is asserted as to all causes of action against Standard. By setting forth these  
31 affirmative defenses, Standard does not assume the burden of proving any fact, issue, or element  
32 of a cause of action where such burden properly belongs to PLAINTIFF. Moreover, nothing

LAI-2945394v1

1 stated herein is intended or shall be construed as an acknowledgement that any particular issue or  
2 subject matter is relevant to PLAINTIFF'S allegations.

3 **First Affirmative Defense to Entire Complaint**

4 **(Failure to State a Cause of Action)**

5 1. The Complaint, and each cause of action, fails to set forth facts sufficient to state a  
6 cause of action upon which relief may be granted against Standard and further fails to state facts  
7 sufficient to entitle PLAINTIFF to the relief sought, or to any other relief whatsoever from  
8 Standard.

9 **Second Affirmative Defense to Entire Complaint**

10 **(Discharge of Obligations / Unjust Enrichment)**

11 2. Standard has performed all obligations required by Standard disability policy, No.  
12 311713 ("Policy"), and any other policy applicable to PLAINTIFF. PLAINTIFF is not entitled to  
13 any additional payment pursuant to the Policy, or any other policy applicable to PLAINTIFF, and  
14 the payment of any additional amount, as demanded by PLAINTIFF, would amount to a windfall  
15 and unjust enrichment.

16 **Third Affirmative Defense to Entire Complaint**

17 **(Waiver)**

18 3. Standard is informed and believes that, at all times relevant to the matters alleged  
19 in the Complaint, PLAINTIFF was fully informed of the alleged rights he now asserts.  
20 PLAINTIFF has acted in a manner inconsistent with the assertion of those rights and,  
21 accordingly, has waived the claims she now asserts.

22 **Fourth Affirmative Defense to Entire Complaint**

23 **(Exclusions and Limitations of Coverage)**

24 4. PLAINTIFF'S recovery, if any, is limited by the terms and conditions of the  
25 Policy, including exclusions and limitations of coverage.  
26  
27  
28

**Fifth Affirmative Defense to Entire Complaint**

**(Estoppel)**

5. PLAINTIFF is not entitled to benefits under the terms and conditions of the Policy, and Standard is informed and believes that PLAINTIFF was informed of any rights and claims that he may have against it. PLAINTIFF conducted himself in such a way as to lead Standard to believe that he relinquished any rights he had against Standard, and Standard has relied upon this conduct to its detriment. PLAINTIFF, therefore, is estopped from seeking damages or other relief based upon the allegations of the Complaint.

**Sixth Affirmative Defense to Entire Complaint**

**(Mitigation of Damages)**

6. Standard is informed and believes that PLAINTIFF has failed to mitigate his damages, if any.

**Seventh Affirmative Defense to Entire Complaint**

**(Punitive Damages; Constitutionality of Punitive Damages)**

7. PLAINTIFF is not entitled to the award of punitive damages insofar as that award would violate Standard's due process or other rights under the United States Constitution, the laws of the United States, or the Constitution or laws of the State of California. Standard further states that PLAINTIFF fails to state sufficient facts to support the prayer for punitive damages against Standard.

**Eighth Affirmative Defense to Entire Complaint**

**(Contributory/Comparative Fault)**

8. Standard is informed and believes and thereon alleges that any alleged damages sustained by PLAINTIFF were, at least in part, caused by the actions of PLAINTIFF and/or third parties and resulted from PLAINTIFF'S or third parties' own negligence which equaled or exceeded any alleged negligence or wrongdoing by Standard.

**Ninth Affirmative Defense to Entire Complaint**

**(Right to Assert Additional Defenses)**

9. Standard hereby gives notice that it intends to rely on any additional affirmative

1 defenses that become available or apparent during discovery or at any other time during the  
2 pendency of this case and, thus, reserves the right to amend its answer to assert such additional  
3 defenses.

4 WHEREFORE, Standard prays for judgment as follows:

- 5 1. That PLAINTIFF take nothing from Standard by his Complaint;
- 6 2. That the Complaint be dismissed with prejudice as to Standard;
- 7 3. That Standard recover its attorneys' fees and costs from PLAINTIFF as permitted  
8 by law; and
- 9 4. For such other and further relief as the Court may deem proper.

10  
11 Dated: April 29, 2008

Jones Day

12  
13 By:   
14 Hollis Peterson

15 Attorneys for Defendant  
16 STANDARD INSURANCE COMPANY  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE BY MAIL**

David Felt v. Standard Insurance Company and Does 1 through 50.  
Case No. 37-2008-00052861-CU-IC-NC; Honorable Jacqueline M. Stern; Dept. N-27

I am a citizen of the United States and employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 12265 El Camino Real, Suite 200, San Diego, California 92130. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On April 29, 2008, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

**GENERAL DENIAL AND DEFENSES OF STANDARD INSURANCE COMPANY TO PLAINTIFF'S COMPLAINT**

in a sealed envelope, postage fully paid, addressed as follows:

Brooks L. Iler, Esq.  
Virgil A. Iler, Esq.  
ILER & ILER LLC  
13400 Pomerado Road  
Poway, CA 92064  
Telephone: (858) 413-1551  
Facsimile: (858) 413-1553

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 29, 2008, at San Diego, California.



Robin Stewart

JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Civil Docket Sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

ORIGINAL

## I. (a) PLAINTIFFS

DAVID FELT

(b) County of Residence of First Listed Plaintiff San Diego County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Brooks L. Iler/ILER & ILER, LLP  
13400 Pomerado Road, Poway, CA 92064 (858) 413-1551

## DEFENDANTS

STANDARD INSURANCE COMPANY and DOES 1 through 50

County of Residence of First Listed Defendant Multnomah County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known)

Katherine S. Ritchey/JONES DAY  
555 California St., 26th Fl., S.F., CA 94104 (415) 626-3939

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 ☐ 2 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 5  
Citizen of Another State ☐ 2 ☐ 3 Incorporated and Principal Place of Business in Another State ☐ 5 ☒ 6  
Citizen or Subject of a Foreign Country ☐ 3 ☐ 4 Foreign Nation ☐ 6 ☐ 7

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Rct. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

## V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. Section 1441

Brief description of cause:  
Breach of contract and insurance bad faith

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$  
unspecified

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S)

IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE: 5-1-08

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 150/25

AMOUNT

\$350 -

APPLYING IFP

JUDGE

MAG. JUDGE

AB 05/01/08

CP



**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 150425 -- MB**

**May 01, 2008  
16:15:46**

**Civ Fil Non-Pris**

USAO #: 08CV0801 CIVIL FILING

Judge...: DANA M SABRAW

Amount.: \$350.00 CK

Check#: BC68611

**Total-> \$350.00**

**FROM: DAVID FELT VS STANDARD  
INSURANCE COMPANY**